UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

HECTOR TORRES,
    Plaintiff,

                        v.   **CASE NUMBER: 98-1328 (HL)**

AMERICAN TRANS AIR, et al.,
    Defendants.

MOTION
Date Filed: 10/15/99   **Docket #** 10   [ ] Plffs [X] Defts [ ] Other **Title:** Reply & Motion to Strike Plaintiff's Witnesses' Affidavit

ORDER

In his Opposition to Defendant's Motion for Summary Judgment, plaintiff included the affidavit of Janet Colon Martinez to corroborate his contention that the plane landed hard on the runway. (Dkt. No. 8, Exhibit 2). In its reply, defendant moves to strike the affidavit and preclude plaintiff from producing Colon at trial due to plaintiff's failure to timely disclose the witness.

On March 16, 1999, during plaintiff's deposition, plaintiff claimed he had the name and telephone number of the passenger who sat beside him, and promised to disclose the information. Only on July 23, 1999, two months after discovery ended, did plaintiff finally disclose witness Colon through an affidavit attached as an exhibit to plaintiff's opposition to summary judgment. Plaintiff's only explanation for the delay is that "[a]fter looking for the person's name plaintiff finally found said name and telephone number among his papers." This is clearly not substantial justification for the delay and prejudice caused to defendant. Consequently, pursuant to Federal Rule of Civil Procedure 37(c)(1), the Court will **not** consider the affidavit in deciding defendant's motion for summary judgment.

However, the Court hereby grants plaintiff until **November 10, 1999**, to make available to defendant this witness at plaintiff's expense. The deposition shall not last more than four hours. Failure to provide to make this witness available to defendant for the taking of the deposition shall result in preclusion of this witness at trial. Plaintiff is to notify the court no later than **October 30, 1999**, of the date when the deposition shall be taken. **No extensions shall be granted.**

Date _/ 0/19/79_   **HECTOR M. LAFFITTE**
                                    Chief U.S. District Judge

Rec'd:	EOD:
By:	